period, is good or is void as against the trustee in bankruptcy, depends upon whether it is good or void according to the law of the state." The case turned on the question of the mortgagee's having taken possession of the property, and the court thought there had been such as to satisfy the statute. And in *Thompson* v. *Fairbanks,* 196 U. S. 516, it was held that the question whether, and to what extent, a chattel mortgage, which includes after-acquired property, is valid, is a local and not a federal question, and in such a case this court will follow the decisions of the state court; (syllabus). But in *James* v. *Gray,* 131 Fed. 401, the court held that a lien by a wife to her husband was provable as a debt against his estate in bankruptcy regardless of its enforceability under the laws of the state. The court said the contract was valid in equity (but it was not in the Massachusetts courts of equity) which the courts of bankruptcy must follow; there was no diverse citizenship. ALDRICH, D.J., dissented on the ground that the holding would establish two rules of property within the state, a condition which he thinks is not in harmony with our theory of government. In *Tucker* v. *Curtin,* 148 Fed. 929, the facts were these: the bankrupts were partners under the firm name of Frederick M. Tucker & Co., doing business as stockbrokers in Boston. Tracy H. Tucker, one of the bankrupts, was the husband of Gertrude H. Tucker, appellant. All the parties lived in Massachusetts and the transactions took place there. Frederick M. borrowed of the appellant Gertrude certain corporate stocks and assigned to her a seat in the N. Y. Cotton Exchange as security. It seems that this was the individual debt of Fred M. and although the seat on the exchange was apparently partnership property, Mrs. Tucker took it without knowledge of the fact. The trustee sold the seat free from all liens by order of the court, and Mrs. Tucker filed a claim to be allowed out of the proceeds thereof the value of the corporate shares lent to Fred M. Tucker. Her claim was disallowed by the referee on the ground that the corporate shares were given her by her husband, which made the gift invalid by the Massachusetts statute, as against the claims of creditors. The Circuit Court of Appeals reversed the decision and refused to follow a Massachusetts case, saying "even if not overruled, it is plain that the principles therein announced have not been continuously and consistently applied by the Supreme Court of Massachusetts." ALDRICH, J., dissented on the ground that the decision ignores the Massachusetts rule of property. In support of his position, he cited *Lumber Co.* v. *Ott,* 142 U. S. 622, which seems to sustain him. It would seem that the principal case follows the better rule as established by the federal courts touching rights under unrecorded mortgages, conditional sales, etc. A covenant in a mortgage to keep the mortgaged premises insured for the benefit of the mortgagee creates a specific equitable lien upon the insurance money which is valid as against the assignee. *In re Sands Ale Brewing Co.,* Fed. Cas. 12307.

BANKRUPTCY—INSOLVENT FIRM—INDIVIDUAL ESTATE OF UNADJUDICATED SOLVENT PARTNER NOT SUBJECT TO ADMINISTRATION.—The court of bankruptcy found that M. S. & J., doing business as the Opera House Drug Company,

made an assignment for the benefit of creditors, and upon that ground alone "adjudged that said M. S. & J., partners doing business as the Opera House Drug Company, be adjudged bankrupts." The decree also provided that "it is further ordered that this adjudication binds only the partnership entity and not the partners as individuals." The partners were not adjudged bankrupts. The partnership property was not sufficient to pay the firm debts, and the trustee thereupon filed a petition for an order upon S. to compel him to turn over to the trustee certain real estate, which did not belong to the partnership, but was his individual property, to be applied to the payment of partnership debts. *Held,* that the real estate of the unadjudicated solvent partner was not subject to administration in bankruptcy upon the adjudication of the partnership. *In re Bertenshaw* (1908), — C. C. A., 8th Cir. —, 157 Fed. Rep. 363.

In this case, the Circuit Court of Appeals, by a vote of two to one, affirmed the ruling of the lower court that the bankruptcy court could not, in its administration of the assets of a kankrupt partnership apply the individual property of solvent partners to the payment of partnership creditors. It is settled that where all the members of a firm are adjudicated bankrupts, but not the firm, then the trustee of the individual members has no authority to interfere with the firm assets, even though the same trustee be appointed for all the partners. *In re Mercur,* 122 Fed. 384; *In re Meyers,* 96 Fed. 408; *Amsinck* v. *Bean,* 22 Wall. 395. In determining the question of partnership insolvency, the individual properties of the partners are to be considered. *In re Perley & Hays,* 138 Fed. 927. When the assignment is made by the partnership and by each of the partners composing it, the act of bankruptcy is committed by all. *Bank* v. *Craig,* 110 Fed. 137. The adjudication should then bind the individuals as well as the firm. From these decisions, it would seem to follow with still greater reason that the trustee of an adjudicated partnership could not administer the individual property of a member of the firm who had not been adjudged a bankrupt. And this is the prevailing opinion in the principal case. However, the dissenting opinion is not without reason and authority in its support. In *Barry* v. *Foyles,* 1 Pet. 311, 317, MARSHALL, C.J., said, "the assumpsit is made by all, and by each." The Supreme Court has laid down the rule that if any member refuses to join in the petition to have the partnership declared bankrupt, notice shall be given him, and he shall be allowed to show if he can, that the partnership is not insolvent or has not committed an act of bankruptcy; but if adjudication is made, "such partner shall be required to file a schedule of his debts and an inventory of his property in the same manner as is required by the act in cases of debtors against whom adjudication of bankruptcy shall be made." *Order VIII,* 32 C. C. A. XI, 89 Fed. VI. In *in re Meyer,* 98 Fed. 976, 39 C. C. A. 368, the point was not directly in issue, but WALLACE, J., said, "we are of the opinion that it is the scheme of these provisions to treat the partnership as an entity, * * * and upon an adjudication to draw to the administration the individual estates of the partners as well as the partnership estate, and marshal and distribute them according to equity." In *Dickas* v. *Barnes,* 140 Fed. 849, 72 C. C. A. 261, 5 L. R. A. (N. S.) 654, SEVERNS, J., said,

"one who combines with others in a partnership enterprise becomes bound for the payment of the partnership debts. * * * In certain circumstances it [the partnership] may become subject to the exercise of the powers of a court of bankruptcy, where its resources will be gathered in to satisfy the claims of creditors. One of those resources is the liability of the partner, for which his individual property stands charged. * * * These consequences of partnership are not derived from the bankrupt act, but from the general law; and a partner is not relieved from them by his exemption from an adjudication of bankruptcy." In *in re Stokes,* 106 Fed. 312, it was distinctly held that the assignee of one of the partners could be compelled to turn over the individual property of that partner to the trustee in bankruptcy of the partnership, notwithstanding the fact that such partner had not been adjudicated a bankrupt.

BILLS AND NOTES—LIABILITY OF INDORSER OF NON-NEGOTIABLE NOTE.—Several teachers executed their non-negotiable promissory notes payable to one Sharpe, therein authorizing the county superintendent to deduct the amount of said notes from their salaries. The notes were indorsed by the superintendent and subsequently purchased by the plaintiff for a valuable consideration. The original considerations for the several notes having failed, action was brought against the superintendent as indorser. *Held,* that the indorser of a non-negotiable note is liable to the indorsee to the same extent as the indorser of a negotiable note. *Bank of Luverne* v. *Sharpe* (1907), — Ala. —, 44 So. Rep. 871.

In a majority of states the indorsement or assignment of a non-negotiable instrument is merely a transfer of its legal and equitable title, and carries with it no guaranty, *Kendall* v. *Parker,* 103 Cal. 319; *Story* v. *Lamb,* 52 Mich. 525; *Shaffstall* v. *McDaniel,* 152 Pa. St. 598; *Wilson* v. *Mullen,* 3 McCord (S. C.) 236; *Whiteman* v. *Childress,* 6 Humph. (Tenn.) 303; unless an intention to guarantee the payment may be inferred, *First National Bank of San Diego* v. *Falkenhan,* 94 Cal. 141; or an express promise to be responsible for its payment is given. *Shaffstall* v. *McDaniel,* supra; *Wilson* v. *Mullen,* supra. In other states the liability of the assignor is analogous to that of an irregular indorser of a negotiable instrument. *Prentiss* v. *Danielson,* 5 Conn. 175; *Sweetser* v. *French,* 13 Met. (Mass.) 262. In New York the assignment is a direct and positive undertaking on the part of the indorser. *Cromwell* v. *Hewitt,* 40 N. Y. 491. In Ohio it is a collateral undertaking, and payment must be demanded and notice given as upon negotiable paper. *Parker* v. *Riddle,* 11 Ohio 103. In many states the subject is regulated by statute. *National Bank* v. *Leonard,* 91 Ga. 805; *Wilson* v. *Ralph,* 3 Iowa 450; *Samstag* v. *Conley,* 64 Mo. 476.

BILLS AND NOTES—LIABILITY OF IRREGULAR INDORSER.—A promissory note was indorsed by the defendants before its delivery to the plaintiff by the maker. The maker having failed to pay the note, this suit was brought without notice to the defendants of its non-payment. *Held,* under 95 Ohio Laws 162, that a person so placing his name on the back of the paper by blank in-